

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**CELESTE WILLIAMS, LAUREN CRUZ,
EMANUEL O'NEALE, BRANDON
STURMAN, LATRESHA HALL,
LAKEISHA MITCHELL, CHRISTINE
BORBELY, JULIE GARIBALDI and
JANINE APONTE, on behalf of themselves
and others similarly situated,**

INDEX NO: 07cv3978-LAP

Plaintiffs,

v.

**TWENTY ONES INCORPORATED d/b/a
THE 40/40 CLUB, SHAWN CARTER p/k/a
JAY-Z, JUAN PEREZ and DESIREE
GONZALES,**

Defendants.

DECLARATION OF JULIE GARIBALDI

I, Julie Garibaldi, under penalty of perjury, affirm as follows:

1. I am a California resident and a named plaintiff in the above-captioned matter.
2. I submit this declaration based on personal knowledge unless indicated otherwise.
3. I was employed as a Server at The 40/40 Club sports bar located at 6 West 25th

Street for the month of June 2006.

4. Throughout my employment at The 40/40 Club, I was not paid the minimum wage for each hour that I worked. Instead, I only received tips. Based on conversations with other employees of The 40/40 Club, such as Anita, Chris, and Agnes (last names unknown) and what I witnessed, I know that it was the common practice of defendants to not pay its employees who received tips a minimum wage and/or hourly wage for any hours of work.

5. I never received a paycheck from The 40/40 Club during my employment.

Therefore, I did not receive anything which reflected my hours of work, the wages I was

supposed to receive, or any withholdings for taxes. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know this was the common practice of defendants.

6. During my employment, I worked more than forty hours in a week. However, I was not paid time and a half for hours worked in excess of forty in a week. The 40/40 Club's failure to pay overtime is reflected in the time report attached as Exhibit A. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not pay its employees an overtime premium. For example, I am personally aware that Agnes, Anita and Chris (last names unknown) worked more than forty hours without being paid overtime at time and a half.

7. The time report attached as Exhibit A also shows that I worked in excess of ten (10) hours per workday for defendants but I was never paid a "spread of hours" premium. I have personally witnessed other employees working shifts of more than ten (10) hours. Among these employees are Agnes, Anita, and Chris (last names unknown). Based on conversations with these employees, I know it was the common practice of defendants to not pay a "spread of hours" premium for workdays in excess of ten (10) hours.

8. Attached as Exhibit B are my alleged payroll reports provided by defendants and shown to me by my lawyers. I did not receive any payroll reports or pay checks during my employment at The 40/40 Club. Therefore, I never saw these documents prior to this lawsuit. Moreover, I have no reason to believe that these alleged payroll reports are an accurate reflection of my working hours at The 40/40 Club.

9. Attached as Exhibit C are my alleged W-2s provided by defendants and shown to me by my attorneys. Throughout my employment at The 40/40 Club, I never received a W-2

and have never seen these documents prior to this lawsuit. Furthermore, I have no reason to believe that these alleged W-2s are an accurate reflection of what I was actually paid in wages.

10. I believe that portions of my tips were retained by defendants. The 40/40 Club did not provide us with, or require us to fill out, any sort of tip declaration form. Since The 40/40 Club did not provide us with any records establishing the amount of tips I should have received, I have no independent means of verifying these amounts.

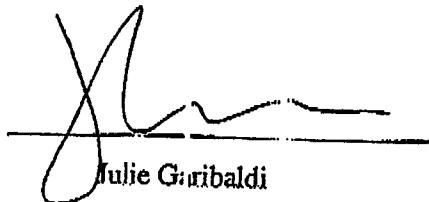
11. If a patron of The 40/40 Club did not sign their credit card receipt, defendants retained the disputed tip for ninety (90) days. Defendants gave me a copy of this policy, which is attached as Exhibit D. I know that this happened to another employee, Agnes (last name unknown). Therefore, based on the experiences of other employees at The 40/40 Club, I know this was the common practice of defendants.

12. I was not paid any direct wage by The 40/40 Club. Because The 40/40 Club never paid me any direct wages, I was not paid the wages I was owed in a timely manner. Other employees, including Anita, Chris and Agnes (last names unknown), have reported to me that they were not paid any direct wages by The 40/40 Club in a timely manner. Therefore, I know that it was the common practice of defendants to not pay its employees in a timely manner.

13. If a patron left The 40/40 Club without paying the bill, defendants would force its employees to pay the bill with his/her own money. For example, Agnes (last name unknown) had a customer walk out (the customer did not sign the credit card imprint) and The 40/40 Club required her to pay the full amount.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6 day of January, 2008.



Julie Garibaldi

EXHIBIT A

40/40 NYC

REPORT DATE: 06/14/2007

PAGE: 1

REPORT TIME: 22:13:15.45

Payroll Report for the period from Mon Jun 19, 2006 to Sun Jun 25, 2006

REG regular OTW ovt-week OTD ovt-day MSC misc pay SAL salary ADJ adjustment DEL deleted punch * Rate changed in punch
 Types of punches not included in regular or overtime calculation: PADJ prev.period adjustment HOL holidays SHDF shift diff.pay

GARIBALDI, JULIE	0820	Department	Job	Tips	Pool	Type	Hours	Rate	Total
End Date: 07/20/06		FRONT OF HOUSE	SERVER		REG	40.0000	3.650	146.00	
					OTD	31.3167	0.000	0.00	
					OTW	8.0000	3.650	29.20	

Total: 40.0000 regular hours (146.00) and 39.3167 overtime hours(29.20) and 0.0000 other hours Total Amt 175.20

+--Department-----Job-----Day---Date---Rate---Type-----In---Out---Hrs-+

FRONT OF HOUSE SERVER	Mon.	6/19	3.650*	5:45p	6:45a	13.00	
	Tue.	6/20	3.650*	5:21p	6:45a	13.40	
	Wed.	6/21	3.650	6:45a	6:45a	0.00	
	Thu.	6/22	3.650*	4:48p	6:45a	13.95	
	Fri.	6/23	3.650*	7:47p	6:45a	10.97	
	Sat.	6/24	3.650*	6:51p	6:45a	11.90	
	Sun.	6/25	3.650*	2:39p	6:45a	16.10	

+-----+-----+-----+-----+-----+-----+-----+-----+

***Total wages for selected employees: 175.20

EXHIBIT B

0020-Y156 TWENTY ONE'S INCORPORATED PAYROLLS BY PAYCHEX.

JUN-05-2007 11:46 PM PAYCHEX, INC.

Redacted

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EXHIBIT C

Form W-2 Wage and Tax Statement 2006

a Control number 0020-Y156 000547-000100		Void	c Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		EMPLOYER REFERENCE COPY - DO NOT FILE Department of the Treasury - Internal Revenue Service OMB No. 1546-0008				
b Employer's identification number 55-0787351	d Employer's social security number [REDACTED]		e Employee's name, address, and ZIP code JULIE GARIBALDI [REDACTED]		1 Wages, tips, other compensation 1324.95	2 Federal income tax withheld 139.90			
13 State employment tax withheld	14 Other NYSDI	2.40			3 Social security wages 387.15	4 Social security tax withheld 82.15			
12 See instructions for box 12					5 Medicare wages and tips 1324.95	6 Medicare tax withheld 19.21			
					7 Social security tips 937.80	8 Allocated tips [REDACTED]			
					9 Advance EIC payment [REDACTED]	10 Dependent care benefits [REDACTED]			
					11 Nonqualified plans [REDACTED]				
15 State NY	Employer's state ID No. 550787351		16 State wages, tips, etc. 1324.95	17 State income tax 35.99	18 Local wages, tips, etc. 1324.95	19 Local income tax 23.72	20 Locality name NY NYC		

Redacted

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EXHIBIT D

THE 40/40 CLUB POLICY AND PROCEDURE EMPLOYEE
UNDERSTANDING

NAME

DATE

Julie Garibaldi

POSITION

SELYER

I UNDERSTAND THE FOLLOWING POLICY'S,
THEY HAVE BEEN EXPLAINED, WRITTEN,
READ AND DISCUSSED AT VARIOUS
MEETING'S.

1. THERE IS A SIX STEP CREDIT CARD PROCEDURE, IT IS POSTED AND IF NOT FOLLOWED MAY CAUSE MY PAYMENT THE FULL AMOUNT OF THE CHECK IN QUESTION.
2. THERE IS ZERO TOLERANCE POLICY FOR DRUG SALE OR USE BY AN EMPLOYEE OR CUSTOMER. ALCOHOL USE BY AN EMPLOYEE, SERVING TO MINORS OR INTOXICATED PATRON'S. THERE ARE PROCEDURES THAT I MUST FOLLOW IF ANY OF THE ZERO TOLERANCE INCIDENTS OCCUR.
3. I MUST BE FLUENT IN ALL MENU ITEMS.
4. I MUST ATTEND WEEKLY MEETINGS.